

CGM

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-196440

DATE: April 3, 1980

MATTER OF: [Payment for Newspaper Advertisements Without  
Prior Authorization]

**DIGEST:** Costs of newspaper advertisements to recruit personnel placed without prior written authority by the head of the Department or his representative may not be paid because such payment is expressly prohibited by 44 U.S.C. § 3702 (1976), regardless of urgency of need and inability to recruit through normal channels. Ratification after advertising services are rendered does not remove the statutory bar against payment. 35 Comp. Gen. 235 (1955). Publisher's claims will be submitted to Congress pursuant to Meritorious Claims Act of April 10, 1928, because of equitable considerations in this case.

~~SECRET~~

Through the Navy Regional Finance Center, the Director, Joint Cruise Missiles Project, Department of the Navy, has requested that we authorize payment for advertisements placed in The Washington Post and The Washington Star. An unassociated claim from Headquarters, Aeronautical Systems Division, Wright-Patterson Air Force Base, for advertisements placed in The Dispatch (Lexington, North Carolina) was also forwarded to us by the Navy Regional Finance Center.

The advertisements were placed in the Washington, D.C., newspapers to fill four Air Force temporary positions to provide support to the Source Selection Evaluation Board which would be in operation for about one year. The positions were for administrative assistant, at a salary of \$11,712 to \$15,222 and clerical positions at salaries from \$9,391 to \$12,208. We are advised that the normal methods of recruiting did not produce qualified candidates. An official from the Headquarters, Aeronautical Systems Division at Wright-Patterson Air Force Base, wrote to us to explain that that Office was aware of and agreed with the Joint Cruise Missiles Project Office's (JCMPO) plan to place advertisements with these newspapers, although it assumed that this would be accomplished through appropriate procedures.

In the case of The Dispatch, the advertisement was placed by a Navy Recruiter who, like the JCMPO, failed to follow established procedures for placing the advertisement.

Addressee

Authorization for

Military Advertising

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Since the advance written approval required by 44 U.S.C. § 3702 (1976) was not obtained prior to the placement of these advertisements, we have no authority to pay the publishers of these newspapers for the advertising. That section states:

"Advertisements, notices, or proposals for an executive department of the Government, or for a bureau or office connected with it, may not be published in a newspaper except under written authority from the head of the department; and a bill for advertising or publication may not be paid unless there is presented with the bill a copy of the written authority."

The head of the agency has the express authority in 5 U.S.C. § 302(b)(2) (1976) to delegate to subordinates the responsibility defined in 44 U.S.C. § 3702 to approve publication of advertisements. We understand, however, that in these cases, no prior approval was obtained from the Secretary or his authorized designee to place these advertisements. We have held that on a number of occasions this statute requires advance approval and may not be ratified after publication has taken place. See, e.g., 35 Comp. Gen. 235 (1955).

In somewhat similar circumstances, we concluded that because the newspapers published the advertisements in good faith and the Government received the benefits thereof, the equities warranted reporting the claims to the Congress under the Meritorious Claims Act of April 10, 1928, 31 U.S.C. § 236 (1976). B-181337, November 25, 1974. (In a letter to the Chairman Joint Committee on Printing dated October 2, 1978 (B-114829), we also recommended that section 3702 be repealed. A similar recommendation was made to the Speaker of the House of Representatives on November 25, 1974 (B-181334). However, the Congress has not chosen to act favorably upon this recommendation to date.)

In his letter to us, the Director of JCMPO wrote:

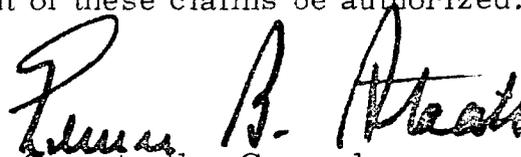
"The Joint Cruise Missiles Project Office (JCMPO) had an urgent need to hire two employees to fill temporary positions created by a Source Selection Evaluation Board that will be in operation for approximately one year. Normal channels of recruitment could not meet the deadline that we were under for filling these positions, which necessitated the unauthorized commitment through the local newspapers. JCMPO only advertised

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through these newspapers after several attempts of hiring through normal channels failed. JCMPO will continue to go through proper channels in the future, making the unauthorized commitment the very last resort. (Emphasis added.)

We wish to make it clear that as long as the statute is on the books, whether it is a "last resort" situation or not, JCMPO must comply with its provisions.

The publishers of the three newspapers in which unauthorized advertisements were placed acted in good faith and the Government received the benefit thereof. Moreover, there is evidence in the record that in all three cases, the advertisements would have received advance approval from the proper authorizing officials had the vouchers been submitted in accordance with the prescribed procedures. Accordingly, on the assumption that the JCMPO will go through proper channels in the future (including compliance with applicable procurement procedures), we are submitting these claims, to the Congress pursuant to the Meritorious Claims Act of April 10, 1928, recommending that payment of these claims be authorized.

  
Comptroller General  
of the United States